

**THE UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF NEW JERSEY**

Caption in Compliance with D.N.J. LBR 9004-1(b)

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In re:

BED BATH & BEYOND INC., *et al.*,¹

Debtors.

Chapter 11
(Jointly Administered)

Case No. 23-13359 (VFP)

**LIMITED OBJECTION OF HRTC 1, LLC TO CURE AMOUNT IN CONNECTION
WITH POTENTIAL ASSUMPTION AND ASSIGNMENT OF UNEXPIRED LEASE
AND RESERVATION OF RIGHTS**

HRTC I, LLC (“HRTC I”), through its undersigned counsel, respectfully submits this limited objection to the Notice to Contract Parties to Potentially Assumed Executory Contracts and Unexpired Leases [Doc. 714] (the “Notice”), and in support hereof states as follows:

¹ The last four digits of Debtor Bed Bath & Beyond Inc.’s tax identification number are 0488. A complete list of the Debtors in these chapter 11 cases and each such Debtor’s tax identification number may be obtained on the website of the Debtors’ proposed claims and noticing agent at <https://restructuring.ra.kroll.com/bbby>. The location of Debtor Bed Bath & Beyond Inc.’s principal place of business and the Debtors’ service address in these chapter 11 cases is 650 Liberty Avenue, Union, New Jersey 07083.

Factual and Procedural Background

1. On April 24, 2023 (“Petition Date”), each of the above-captioned debtors (“Debtors”) filed voluntary petitions for relief under chapter 11 of title 11 of the United States Code (“Bankruptcy Code”).

2. On June 13, 2023, the Debtors filed the Notice, which states that, “pursuant to the Bidding Procedures and the terms of any Successful Bid, the Debtors *may* assume and assign to the Successful Bidder the contract or agreement listed on Exhibit A to which you are a counterparty, upon approval of the Sale Transaction.” Notice at 2 (emphasis in original).²

3. Exhibit A to the Notice includes a lease with HRTC I for the premises located at 9315 Dorchester, Highlands Ranch, CO and described in the Notice as “Lease Agreement - 9315 Dorchester, Highlands Ranch, CO” (the “HRTC I Lease”). Exhibit A to the Notice asserts that the cure amount for the HRTC I Lease is \$131,598.57.

4. In addition, on May 22, 2023, the Court entered the Order (I) Establishing Procedures to Sell Certain Leases, (II) Approving the Sale of Certain Leases, and (III) Granting Related Relief [Doc. 422] (the “Lease Sale Procedures Order”). The Lease Sale Procedures Order, among other things, approves additional sale procedures related to the Debtors’ potential sale of leases, and permits landlords to submit bids in connection with their leases, including credit bids of their undisputed cure amounts.

Limited Objection

5. Section 365(b)(1) of the Bankruptcy Code provides that a debtor may not assume an unexpired lease unless it cures all defaults (or provides adequate assurance that defaults will be promptly cured). *See Tutor Perini Bldg. Corp. v. N.Y.C. Reg'l Ctr. George Wash. Bridge Bus Station & Infrastructure Dev't Fund, LLC (In re George Wash. Bridge Bus Station Dev. Venture*

² Capitalized terms in the Notice have the meanings set forth in the Court’s order approving bidding procedures [Doc. 92] (the “Bidding Procedures Order”).

LLC), 65 F. 4th 43, 47 (2d Cir. 2023) (“Under § 365, a debtor undergoing reorganization may not assume ‘an executory contract or unexpired lease’ in which there ‘has been a default’ until the debtor ‘cures’ the default.”); *In re Newpage Corp.*, 517 B.R. 508, 514 (Bankr. D. Del. 2014) (“[B]efore a trustee or debtor in possession may assume a contract pursuant to § 365 of the Bankruptcy Code, it must cure all defaults, assure future performance, and make the other contracting party whole.”)

6. HRTC I asserts that the correct cure amount for the HRTC I Lease, as of the date of filing this limited objection, is **\$165,956.31** (the “Correct Cure Amount”). The Correct Cure Amount is comprised of (1) 2022 real estate tax liabilities of \$125,575.38, based on the 2022 Tax Assessment of \$131,598.57, plus February and April late fees totaling \$1,672.36 (\$836.18 each), less a 2021 Tax Refund in the amount of (\$7,695.55); and (2) prorated 2023 real estate tax liabilities as of the Petition Date in the amount of \$40,380.93, which are due and owing under the HRTC I Lease.

7. If the HRTC I Lease is to be assumed or assumed and assigned, the Debtors or the assignee should be required to pay HRTC I the Correct Cure Amount in accordance with section 365(b) of the Bankruptcy Code, together with any other amounts accruing under the Lease between the date of this filing and the date that the HRTC I Lease is actually assumed, or assumed and assigned.

8. In addition to cure costs, HRTC I is entitled to adequate assurance of future performance by any assignee under section 365(f)(2)(B) of the Bankruptcy Code.

9. As a shopping center lease, this also requires satisfaction of the provisions of section 365(b)(3), which requires adequate assurance:

(A) of the source of rent and other consideration due under such lease, and in the case of an assignment, that the financial condition and operating performance of the proposed assignee and its guarantors, if any, shall be similar to the financial condition and operating performance of the debtor and its guarantors, if any, as of the time the debtor became the lessee under the lease;

(B) that any percentage rent due under such lease will not decline substantially;
(C) that assumption or assignment of such lease is subject to all the provisions thereof, including (but not limited to) provisions such as radius, location, use, or exclusivity provision, and will not breach any such provision contained in any other lease, financing agreement, or master agreement related to such shopping center; and
(D) that assumption or assignment of such lease will not disrupt any tenant mix or balance in such shopping center.

11 U.S.C. § 365(b)(3).

10. HRTC I objects to the extent any proposed assignment of the HRTC I Lease fails to comply with any of the foregoing requirements under section 365(b)(3) of the Bankruptcy Code.

Reservation of Rights

11. HRTC I further reserves the right to amend and/or supplement this objection and the Correct Cure Amount. Further, while the Lease Sale Procedures Order is not referenced in the Notice, HRTC I further reserves all rights with respect thereto. All objections and reservations asserted herein apply with equal force to any proposed sale, assumption or assignment under the Lease Sale Procedures Order, to the extent applicable.

Conclusion

WHEREFORE, HRTC I respectfully requests that the Court sustain this limited objection by conditioning assumption and assignment of the HRTC I Lease on: (1) payment to HRTC I of the Correct Cure Amount plus any other amounts accruing under the HRTC I Lease between the date of this filing and the date that the HRTC I Lease is actually assumed or assumed and assigned; and (2) provision of adequate assurance of future performance, including without limitation as required by section 365(b)(3) of the Bankruptcy Code, and grant any other and further relief that the Court may deem appropriate.

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Dated: June 23, 2023

Respectfully submitted,

**McELROY, DEUTSCH, MULVANEY
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/s/ Jeffrey Bernstein

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